IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

OP.No. 38614 of 2001(V)

PETITIONER:

JOLLY CHERIAN, JOJO SADANAM,
OMALLUR, PUTHEN PEEDIKA,
PATHANAMTHITTA.

BY ADV. SRI.G.JANARDHANAN KURUP

RESPONDENTS:
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1. **THE DEPUTY LABOUR COMMISSIONER AND SECRETARY,**
   STATE ADVISORY CONTRACT LABOUR BOARD,
   THIRUVANANTHAPURAM.

2. **THE PRESIDENT,**
   PATHANAMTHITTA SERVICE CO- OPERATIVE
   BANK LTD. NO.Q 363,
   PATHANAMTHITTA.

BY ADV. SRI.V.G.ARUN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25 / 05 / 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.63414/2001 IN OP. NO.38614/2001

DISMISSED

25.05.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THE DY. LABOUR COMMISSIONER & SECRETARY, TRIVANDRUM DT.30.3.99.

EXT.P2:- COPY OF THE JUDGMENT DT.23.6.2000 OF THIS HONOURABLE COURT IN OP. NO.16508/99.

EXT.P3:- COPY OF THE APPLICATION OF THE PETITIONER TO THE DY. LABOUR COMMISSIONER TRIVANDRUM DT.30.1.2001.

EXT.P4:- COPY OF THE SHOW – CAUSE NOTICE OF THE APPELLATE AUTHORITY DT.16.6.99.

EXT.P5:- COPY OF THE OBJECTION OF THE 2ND RESPONDENT DT.31.3.01.

EXT.P6:- COPY OF THE DETAILED STATEMENT OF THE PETITIONER DT. NIL.

EXT.P7:- COPY OF THE ORDER DT.12.10.01 OF THE APPELLATE AUTHORITY TRIVANDRUM.

EXT.P8:- COPY OF THE LETTER OF THE PETITIONER TO THE 2ND RESPONDENT DT.9.11.01.

EXT.P9:- COPY OF THE STATEMENT OF THE 2ND RESPONDENT DT.14.11.2000.

RESPONDENTS EXHIBITS

EXT.R2(a):- COPY OF THE LETTER NO.1457/01 DT.5.11.01 OF THE BANK.

/TRUE COPY/

tss

S.SIRI JAGAN, J.

OP .No.38614/2001

Dated this the 25th day of May, 2007

JUDGMENT

The petitioner was dismissed from the services of the second respondent on 12.10.1989. The petitioner filed Shop Appeal No.43/92. By Ext.P1 order, the management was directed to reinstate the petitioner or to pay compensation of Rs.2.50 lakhs in addition to the back wages and all terminal benefits as ordered in the earlier paragraphs with attendant benefits. The second respondent challenged Ext.P1 order up to the Supreme Court and lost. Thereafter the petitioner took out execution proceedings before the first respondent appellate authority. In view of the huge difference between the statement of accounts filed by the parties, the first respondent took upon himself the task of computing the amounts payable to the petitioner under Ext. P1 and directed the second respondent to pay a total amount of Rs.7,93,658/- by Ext.P7 order. The said order is under challenge at the instance of the petitioner employee on the ground that he is entitled to the entire amount claimed by her as per the statement filed by her before the first respondent, which is Rs.13,96,077/-. According to the petitioner, the calculation is not in accordance with Ext.P1 order and that the

petitioner is entitled to interest also on the amount.

2. In the counter affidavit filed by the second respondent while refuting the contentions of the petitioner, it has been stated that the amount of Rs.7,93,658/- was offered to the petitioner by cheque. However, the petitioner refused to accept the same. No reply affidavit is filed.

3. I have considered the rival arguments for the purpose of deciding whether Ext.P7 is correct or not. What has to be essentially looked into is the operative portion of Ext.P1 order which are paragraphs 25 to 27 to decide whether the computation in Ext.P7 is in accordance with Ext.P1. The said paragraphs are extracted below:

> 25. I direct the management bank to reinstate Smt.Jolly Cherian, Chief Accountant, into service with 50% of back wages and all attendant bnenefits. I also direct the management bank to make payment of lumpsum of Rs.2.50 lakhs towards compensation in lieu of the reinstatement into service for the loss of her employment in addition to back wages, with all attendant benefits, ordered above. The 50% back wages shall be computed for the period from 12.10.1989 onwards. However, the period she was kept out of employment shall be treated as services for all the purposes including, fixation of pay, seniority, service gratuity and pension. It is clarified that the amount of subsistence allowance paid to the employee shall not be adjusted against the back wages payable. The appellant is also entitled to service gratuity and pension for the entire period of her service, as per the rules in force in the bank.
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> 26. I direct the management to reinstate the employee into service within 30 days or to pay compensation of Rs.2.50 lakhs in addition to the backwages and all terminal benefits ordered above, with all attendant benefits, failing which

further action as contemplated under section 18(6) of the Act will be taken.

27. The management has already paid Rs.10,000/- to the employee, as per judgment of the Honourable High Court of Kerala dated 6.10.1997 in OP.No.1296/93. The management is entitled to adjust the amount from the back wages/lumpsum compensation as per this order. "

4. In Ext.P7 the first respondent has computed the amount due to the petitioner as follows:-

1 a. Duty pay from 1.10.89 to 11.10.89	Rs. 864/-
b.50% back wages from 12.10.89 to 31.3.99	Rs.2,59,508
c. surrender leave salary	Rs. 43,881/-
2. Medical allowance	Rs. 5,250/-
3. Bonus upto 1999	Rs. 23,396/-
4. Gratuity	Rs. 1,02,160/-
5. Terminal leave surrender salary	Rs. 47,617/-
6. P.F. contribution by bank	Rs. 22,835/-
7. P.F.deposits and interest upto 30.9.01	Rs. 52,717/-
8. Compensation for retrenchment	Rs. 2,50,000/-
9. Security deposit with interest upto 30.9.2001	Rs. 11,256/-
Total	Rs.8,19,482/-
Amount paid by the direction of High Court	Rs. 10,000/-
Less self advance admitted by the applicant	Rs. 15,824/-
Net	Rs.7,93,658/-
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5. On a reading of the extracted portions of Exts.P1 and P7 I am satisfied that the computation in Ext.P7 is perfectly in accordance with Ext.P1 order and therefore Ext.P7 does not call for any interference at the hands of this court. Since Ext.P1 order also does not provide for payment of any interest and also since the petitioner has taken an unreasonable attitude in not even accepting the amount paid by the second respondent as per Ext.P7 order, I am not inclined to accept the claim of the petitioner for interest also. In the above circumstances, I do not find any merit in the original petition. Accordingly, the same is dismissed. I also note that more than 18 years have elapsed since the original dismissal of the petitioner and as such it is better to give quietus to the whole issue. The second respondent shall forward a cheque for the amount of Rs.7,93,658/- to the petitioner by registered post acknowledgment due within one month from today, failing which the petitioner should be paid interest on the amount at the rate of 6% from the date of Ext.P1.

S.SIRI JAGAN, JUDGE.

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